

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

APPEAL FROM ORDER NO. 196 OF 2005

East India Transport Agency & others. ... Appellants.

Versus.

The Trustees of the Port of Bombay
and others.

... Respondents.

Shri M.M.Vashi for the Appellants.

Shri U.J.Makhija i/by M/s.Mulla & Mulla C.B.C. for the
Respondents.

CORAM : ABHAY S. OKA, J.

DATED : 22nd February, 2005.

P.C.:

1. In order dated 10th February 2005 a statement of the learned Advocate for the Appellants was recorded that the Appellants Nos.6, 7 and 9 will vacate the premises in their respective occupation on or before 14th February 2005. It is not in dispute that the compliance has been made with the said statement. In the same order a further statement of the Advocate appearing for the Appellants was recorded that the other Appellants are ready and willing to give unconditional undertaking to vacate their respective premises provided reasonable time to vacate is granted to them. The Advocate for the Appellant has not made submissions on merits of the Appeal.

2. In so far as the Appellant No.1 is concerned, it is not in dispute that the decree for possession has been

executed in respect of the premises in possession of the Appellant No.1 and the Respondent No.1 has fixed its lock on the said premises. Shri Vashi submitted that the belongings of the Appellant No.1 are lying in the premises and therefore, reasonable time to vacate be given as in case of other Appellants. The said request is opposed by Shri Makhija the learned Advocate appearing for the Respondent No.1. Considering the submissions made, there is no question of granting any time to vacate to the Appellant No.1. However, if any goods of the Appellant No.1 are lying in the premises, the Respondent No.1 will permit the Appellant No.1 to take away the said goods within 10 days from today. The Appellant No.1 will give advance intimation in writing to the Respondent No.1 of the date and time fixed for taking away the goods.

3. One Omprakash Mahipal, one of the Directors of the 2nd Appellant-company has filed an undertaking on behalf of the 2nd Appellant-company. The undertaking states that the 2nd Appellant-company will hand over vacant and peaceful possession of the godown of the 2nd Appellant-company to the Respondent No.1 on 1st June 2005. The learned Advocate appearing for the Appellants on instructions states that Shri Omprakash Mahipal is authorised by the 2nd Appellant-company to file the undertaking. The undertaking is taken on record and marked as "A-1" for identification. The said

Undertaking given on behalf of the 2nd Appellant-company is accepted. Hence the decree for possession shall not be executed till 1st June 2005 in respect of the premises in possession of the 2nd Appellant.

4. The Advocate for the Appellants has tendered an affidavit-cum-undertaking of one Shri Chandan Singh, Proprietor of the 3rd and 4th Appellants. Shri Makhija appearing for the Respondent No.1 pointed out that there is no undertaking recorded in the said affidavit that the 3rd and 4th Appellants will vacate the suit premises in their possession on or before 1st June 2005. Hence the said undertaking cannot be accepted. In the circumstances time to vacate cannot be granted to the Appellants Nos.3 and 4. However, the Appellants Nos.3 and 4 are granted time of two weeks to remove their articles from the premises in their possession and for a period of two weeks from today, the decree for possession shall not be executed. The affidavit of Shri Chandan Singh is marked as "A-2" for identification. Decree for possession will not be executed in respect of the premises in possession of the 3rd and 4th Appellants only for a period of two weeks from today.

5. Shri Bhavani Shankar Bhansal, Proprietor of the 5th and 10th Appellants has filed affidavit, which is taken on record and marked "A-3" for identification. In the said affidavit also there is no undertaking given by the

said Appellants to vacate the premises in possession of the 5th and 10th Appellants on or before 1st June 2005. The learned Advocate for the Appellants states that Bhavani Shankar Bhansal is present in Court and he will file a proper undertaking by 4.30 p.m. today. If proper undertaking is filed during the course of the day, the decree shall not be executed in so far as the premises occupied by the 5th and 10th Appellants are concerned till 1st June 2005. If such an undertaking is not filed during the course of the day, time to vacate will not be granted to the 5th and 10th Appellants and the said Appellants will be granted only two weeks time to remove their goods from the premises in their possession.

6. One Shri Durgaprasad Gupta claiming to be the General Manager of the 11th Appellant-company has filed undertaking. He claims to be the General Manager of the 11th Appellant. He claims to be the Power of Attorney holder of the 11th Appellant-company. Shri Makhija appearing for the Respondent No.1 points out that the said undertaking cannot be accepted as there no authority is produced empowering him to give undertaking. The said affidavit is marked "A-4". As the General Manager is obviously not authorised to file undertaking on behalf of the Company the said undertaking is not accepted. Time of two weeks is granted to the 11th Appellant to remove their goods from

the premises in their possession and for that period the decree for possession shall not be executed.

7. The 8th Appellant has filed affidavit of one Shri Kishan C.Dingreja who is its Proprietor. My attention has been invited to the earlier affidavit dated 15th December 1995 filed by the same person in Contempt petition No.160 of 1995 in which he has stated that in the total premises admeasuring 220 sq.ft. there are three occupants and he is using one cabin and two cabins are being used by one M/s.New Kerala Roadways and one Shri D.S.Gupta. Shri Makhija states that there is no undertaking filed by the said Shri D.S.Gupta. The affidavit of Kishan Dingreja is marked as "A-5". An affidavit is filed by Shri Lakbir Singh Proprietor of M/s.New Kerala Roadways which is marked as "A-6" for identification. However, the said Affidavit does not contain an Undertaking to vacate the Cabin. therefore, time to vacate cannot be granted in respect of the Cabin stated to be earlier in possession of Shri D.S.Gupta and M/s.New Kerala Roadways. The undertaking given by Shri Kishan C.Dingreja is accepted and he is granted time to vacate upto 1st June 2005 in respect of only one cabin which is in possession of the 8th Appellant. The Decree for possession in respect of the said Cabin shall not be executed till 1st June 2005. The decree for possession can be executed by Respondent No.1 in respect of the remaining portion of the premises which were in

possession of the M/s.New Kerala Roadways and Shri
D.S.Gupta.

8. Though in the undertakings which are filed today
reference is made by the respective Appellants to the
payment of certain amounts to the Respondent No.1, it is
made clear that I have made no adjudication on the said
aspect and it is for the Respondent No.1 to recover the
amounts, if any, due to the Respondent No.1 by the
concerned Appellants in accordance with law.

9. Subject to what is stated above the Appeal is
dismissed with no order as to costs. The ad-interim
relief granted earlier also stands vacated.

10. The parties to act on authenticated copy of this
Court.

Judge.